

The Independents Voice

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Audiovisual policy: what now?

European audiovisual policy should have a triple aim: to enable producers to carry out their creative vision (without losing sight of business and market imperatives); to promote access to the market (in particular the emerging digital market) at non-discriminatory terms; to promote Europe and its wider policy goals in terms of the Lisbon strategy, competitiveness and social and economic inclusion.

The issue of market access is essential; with the TWF directive acting as a key regulatory tool for European productions, in particular on new services. Enforcement of competition rules is also vital.

The objective of encouraging production and distribution of European content remains valid and indeed vital. It's important to note that regulation at a national level has evolved considerably since the first TWF directive in 1989. Member states have endorsed by a large majority the principle of investment obligations, which forces broadcasters to invest in content and as a result provide a commercial outlet for distribution.

In 1998, the European commissioner in charge of audiovisual, Marcelino Oreja, made the following sensible proposal: "Investment in European production should be applied to all audiovisual services marketed in Europe and would guarantee that revenue generated downstream in distribution is reinvested upstream in production. Considering the high demand in local programmes, the market will no doubt go a long way to ensuring this reinvestment itself." Obviously, the commissioner had in mind the provision of both "non-linear" (essentially on demand) and "linear" (scheduled) services.

At the same period Rupert Murdoch committed BSKyB to invest in 12 film productions a year. Unfortunately, he instead invested in Hollywood movies, \$724m (€576.5m) in 2004, and in exclusive sports rights, \$1.5bn (€1.2bn) in 2004. It is only regulator pressure that led BSKyB to commit \$57.4m (€46m) to Italian cinema as a price for the acquisition of pay TV platform Telepiu/Stream.

The Murdoch family is also used to making bold statements about market access: "Pluralism and diversity are growing organically under our very noses while we agonize about their shrinkage... Pluralism and diversity are actually endemic in this brave new world."¹

Yet consolidation has increased. Four majors control 80% of the music market, for example, 95% if you look at the all-important chart market figures for Europe. Universal and Sony/BMG alone control over 65%.

Similarly, seven Hollywood majors have increased control of the global box office.

The market share of European films in the US was 3.3% in 2003 – half its share in the late 1990s. No new players have been able to challenge

this entrenched dominance. It is for this reason that independent record companies (IMPALA – www.impalosite.org) decided to appeal before the European Court of Justice the decision of the European Commission to allow the Sony/BMG merger.

The fight against collective dominance and abuse of market power is key to enabling market access and avoiding the marginalization of European players, which collectively create more employment and wealth than the media conglomerates taken together.

First and foremost, European companies deserve a policy that does not distinguish between culture and industry: an industrial policy to support the audiovisual sector is cultural policy. The promotion of cultural diversity is about getting European films – whether commercial or cultural – to be seen by the public. US culture is promoted by its vibrant cinema industry.

Attempts to discriminate against commercial cinema as part of the EU state aid policy put at risk plans to make Europe's film industry more competitive and less reliant on state aid. Industrial infrastructure is crucial to this cultural goal.

There should be a focus on the future in two key areas – digital delivery and finance.

Digital delivery of films

We should make sure that European companies are in a position to anticipate market changes with new digital delivery platforms.

There are already 100 million broadband users in the OECD countries (2004 statistics). Video on demand's (VOD) penetration rate is above 15% in most developed countries – take-up is rising fast. There are already 44 million films available on the networks, with 95 million P2P users in the world. VOD sales reached \$337m in 2004. By comparison, digital music distribution reached \$310m. The market for film download is already as big as the download music market. Seventy-seven per cent of European teenagers download entertainment. The future is already here.

Digital delivery can challenge the market structure and promote diversity of offer.

Theoretically it enables European films to reach new customers throughout the world. But first, film companies must be able to challenge business practices and, most importantly, license on a one-stop shop basis for the European territory.

1. Birmingham Conference, 1998.



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Harnessing digital delivery is daunting for an independent film company that lacks sufficient capital for the necessary technology and business models. Traditional subsidies focused on production for theatrical releases should not act as a disincentive to adopt new business practices. Distribution rights are scattered around, with different distributors in each country. The scope of VOD rights varies between nations.

Few European companies have a catalogue large enough to interest a service provider or a digital delivery platform. Independents will be the last in the rights acquisition chain. European companies risk being dictated discriminatory licensing terms at international level.

But acting collectively, European producers may leverage the strength of their catalogue. The internet offers promising opportunities for so-called specialist films. US independent record companies have claimed 35% market share in the download music market, compared to 20% in traditional distribution.

However, independents need to work together for a common goal.

Finance

The emerging digital market is also an opportunity to focus on the financial state of the creative industries. The latter suffer from chronic under funding. Risk and innovation based on intellectual property assets are shunned by traditional financial institutions.

There is no overall EU policy to consider creative industries and their role in the Lisbon agenda. This is extraordinary considering that the sector is growing faster than any other industrial sector and that it is predominantly composed of the kind of SMEs the European Commission wants to nurture to propel the "knowledge economy".

At the Lisbon summit, EU member states mandated the European Commission and the European Investment Bank to address the lack of risk capital in the sector. The plan was to consider financial instruments to help Europe's content industry benefit from the digital economy and to ensure the presence of European content on global networks.

In May 2001, the European Commission and the European Investment Bank announced a joint strategy to provide €1bn to support investment in the audiovisual sector. The objectives were, inter alia, to enhance the competitiveness of the European film and audiovisual industry and to act as a catalyst for support from the financial and banking sector. It was announced that the EIB group would improve access to finance for the European and audiovisual industry with a lending capacity that would exceed €500m – a considerable political achievement.

Five years later, the EIB has lent €83m and only to the French film industry, through agents Coficine and Cofiloisirs.

The EIB will only lend to those European companies that enjoy a safe environment, like France with its state guarantees on TV investment and distribution pre-finance. That is surely discrimination.

The record of the European Investment Fund (EIF) (the branch of the EIB focusing on providing risk capital) in audiovisual is even more dismal. It manages a portfolio of 184 funds with a commitment in excess of €2.5bn. The funds are almost exclusively focused on technology; none are active in the audiovisual or creative industries.

Conclusions

Europe's economic and social destiny rests on its leadership in the knowledge economy.

Whilst the EU enterprise policy focuses on industrial innovation and research and development, it should also contemplate the fate of companies which have their origin in creativity, skill, talent (everything from music and film to design and publishing, fashion and computer games) and which rely on the exploitation of intellectual property.

In the UK the creative economy is growing at 8% a year. It accounts for one in five of all jobs in London and its contribution to the balance of trade is twice that of the pharmaceutical sector.

Audiovisual remains one of the best means to share our European values with the rest of the world: freedom, democracy, equality, justice, solidarity.

The moving image contributes more to intercultural dialogue, mutual understanding and integration than speeches.

The TWF Directive revision is the opportunity to make EU policy relevant to the needs of the sector. It is about rebuilding confidence in the institutions and asserting their credibility. Europe is more than one single market; it is a common social and cultural heritage that deserves to be promoted in all its diversity.

The European Union cannot on one hand act unanimously to sign an international treaty at UNESCO recognizing the importance of promoting cultural diversity and then be told by the European Commission that cultural diversity is not a goal of the internal market or of EC competition policies.

The absence of an audiovisual Europe means a Europe without a soul, and could lead to no Europe at all. The debate is at the very heart of the political dimension of the continent.

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